IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4965 of 2006
With
CIVIL APPLICATION No. 14420 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO LTD - Appellant(s)
Versus
SAVTHANJI KHODAJI THAKOR & 2 - Defendant(s)

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Appearance :
MR HS MUNSHAW for Appellant(s) : 1,
None for Defendant(s) : 1 - 3, 3.2.1, 3.2.2,3.2.3

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 19.10.2004 of the Motor Accident Claims Tribunal, Ahmedabad Rural in MAC Petition No.1745 of 1990 awarding compensation of Rs.96,469/- with interest at the rate of 9% per annum from the date of the claim petition till realization to respondent No.1 herein (original claimant) on account of the injuries sustained by the claimant in a motor vehicle accident.

2. On 24.3.1989, the claimant was engaged in the work of processing wheat in the thresher in the field of Merubhai Somabhai Thakore when the thresher was attached with tractor No. GRG-9150 and the tractor was being driven by original opponent No.1 (respondent No.2 in this appeal). When the tractor was moving the thresher, the right hand of the claimant was crushed by the thresher. The claimant, therefore, filed the claim petition for compensation of Rs.2 lakhs.

The Tribunal held that the accident was caused by the sole negligence of the driver of the tractor. The following amounts have been awarded by the Tribunal for compensation under different heads:-

Rs.51,149/- for loss of future income;
Rs. 4,320/- for actual loss of past income;
Rs.25,000/- for pain shock and suffering;
Rs.10,000/- for medical expenses;
Rs. 2,000/- for attendant charges;
Rs. 2,000/- for special diet;
Rs. 2,000/- for conveyance charges;

Rs.96,469/- TOTAL

The Tribunal repelled the contention of the Insurance Company that the Insurance Company was not liable to satisfy the award because only the tractor was insured and not the thresher.

3. Mr Munshaw with Mr Barot for the appellant-Insurance Company reiterated the contention urged before the Tribunal disputing its liability to satisfy the award. Secondly, it is also submitted that since the complaint was filed by the claimant one week after the accident and the case of the driver of the tractor was that the claimant was under the influence of alcohol, the Tribunal ought not to have held even the driver responsible for the accident in question.

4. Having heard the learned advocate for the appellant-Insurance Company and having gone through the judgment under appeal, we find that the Tribunal has given cogent reasons for not accepting the

contentions urged on behalf of the Insurance Company.

5. The accident in question took place when not only the thresher was attached to the tractor, but when the thresher was being moved with the help of the tractor. Since the right hand of the claimant was crushed in the thresher and the claimant had to be rushed to the hospital where the claimant's right upper arm was required to be amputated at the level of upper third of forearm, and when the claimant had given the history of vehicular accident (tractor with thresher) when he was admitted to the hospital for treatment, it cannot be said that the claimant has come before the Tribunal with an after-thought. In the facts and circumstances of the case, the Tribunal has also rightly negatived the case of the tractor driver that the claimant was under the influence of alcohol.

6. On the question of quantum of compensation also, we do not find any substance in the appeal. The Orthopaedic Surgeon in the injury certificate at Exh.52 and the disability certificate at Exh.53 clearly certified that on account of amputation of right upper limb at the level of upper third of forearm, there was permanent partial disability assessed at 74%. We do not see any reason why the Tribunal should have assessed the functional disability at 37% merely because the Orthopaedic Surgeon Shri Jethwa at Exh.51 admitted in his cross-examination that permanent disability of the body as

a whole can be taken at one-half of the physical disability. Considering the fact that the claimant was only doing labour work and that he has lost substantial part of his right forearm, the Tribunal could have easily followed the principles enunciated by the Apex Court in **Pratap Narain Singh vs. Shrinivas, AIR 1976 SC 222**. Subsequently, in the case of **Babu Mansa vs. Ahmedabad Municipal Corporation, 19 GLR 492**, also this Court has held that the assessment of functional disability of the body as a whole cannot be done mechanically by looking at the physical disability of a particular part of the body. The Tribunal has to consider whether the claimant would be able to perform the same job or carry on the same avocation which he was performing/carrying on before the accident. Hence the compensation of Rs.51,149/- for loss of future income is not only conservative but ridiculously low. In the first place, for the labourer aged 20 years, the Tribunal assessed the monthly income at Rs.720/- forgetting that even for a non-earning person, the Legislature has provided for assessment of notional income at Rs.15,000/- per annum. Thereafter, without considering the serious permanent disability to which the claimant has been subjected rendering him unfit for doing any labour work, the Tribunal assessed the loss of earning capacity at only 37% i.e. Rs.266.40 p.m.i.e. Rs.3196.80 p.a. And then multiplied it by multiplier of 16.

Rs.51,149/- Rs.720 X 37% = Rs.266.40 X 12 = Rs.3196.80
Rs.3196.80 X 16 = Rs.51,148.80 i.e.
Rs.51,149/-

7. Having gone through the judgment under appeal, the amount of compensation awarded by the Tribunal is not only conservative but ridiculously low, as discussed above.

8. The appeal is, therefore, summarily dismissed.

The amount deposited by the appellant before this Court at the time of filing the appeal shall be transmitted to the Tribunal within one month from today.

9. Since the appeal is dismissed, the civil application for stay is also dismissed.

10. A copy of this judgment shall be sent to the Presiding Officer of the Tribunal who rendered the judgment under appeal and also to the learned Administrative Judge, incharge of the Motor Accident Claims Tribunal.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

zgs/-